



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/03825/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 20<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 7<sup>th</sup> Septemebr 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MASUM AHMED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Hasan of Kalam Solicitors  
For the Respondent: Mrs R Pettersen, HOPO

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Oliver made following a hearing at Hatton Cross on 14<sup>th</sup> August 2017.

**Background**

2. The appellant is a citizen of Bangladesh. He originally came to the UK as a working holidaymaker on 12<sup>th</sup> September 2009, with leave valid to 16<sup>th</sup> August 2011. He then made an in-time application as a spouse and when it was refused made a voluntary departure before re-entering the UK on 4<sup>th</sup> September 2012 with a spouse visa valid to

13<sup>th</sup> December 2014. He then applied to remain on the basis of his family and private life rights and was granted leave outside the Rules valid to 31<sup>st</sup> October 2015.

3. The appellant made an in-time application, on 22<sup>nd</sup> October 2015 for leave to remain in the UK under the five-year parent route. He explained that on 14<sup>th</sup> October 2014 his wife had left the matrimonial home, since when their son, who was born on 14<sup>th</sup> August 2014, has lived with his former wife.
4. The application was refused on 28<sup>th</sup> January 2016 because the respondent was not satisfied that the appellant had obtained a residence order or a contact order.
5. The judge recorded that the appellant had obtained a court order under Section 8 of the Children Act 1989 granting him supervised contact with his son on a weekly basis. However, by the date of the hearing, the contact centre, the Families Forward Centre in Leeds, had suspended the weekly contact and it was reduced to quarterly, i.e. two hours every three months.
6. The judge noted as follows:

“In normal circumstances it is obviously very important for children to have regular contact with both parents when they are growing up, but there are clear exceptions. Without intending in any way to trespass on the jurisdictional expertise of the Family Court, I note that it is only common sense to realise that exposure to marital war is not conducive to a happy upbringing. The appellant has been at pains to emphasise his concern for his son, for whom he would do anything. One thing he has signally failed to do is to gain a sufficient grasp of the English language to be able to communicate with him. He has had three years to do this and it has followed the pattern of the previous five years, four of them spent in the UK, when he clearly failed to make use of his time in this respect. Even now he has shown no urgency and merely has an intention to attend for assessment to see if he can be enrolled for a course. He made much at the hearing of the gifts he sent to his son via the contact centre, but when these were examined the evidence related to a very few inexpensive items purchased in the main only days before the hearing.

If the appellant had a right to stay in the UK it may be in his son’s best interests that efforts continue to see if he can remain a part of his son’s life, but he has no other basis for staying and I have to consider the competing demands of the public interest in the maintenance of fair but firm immigration. I am satisfied that this appellant has been using his son’s situation as a means of extending his own stay in the UK. Any interference with his son’s rights and his own Article 8 rights is, in my judgment, proportionate. EX.1 has no application in this case because there is no question of his son having to leave the UK. There are no obstacles to the appellant’s return.”

7. On that basis he dismissed the appeal.
8. The appellant sought permission to appeal which was initially refused by Judge Landes but granted upon re-application by Upper Tribunal Judge Grubb.

9. Judge Grubb wrote as follows:

“The judge may have wrongly applied E-LTRPT.2.4(b) in that, although the appellant’s contact with his son has been reduced, he has direct contact by court order and that there was evidence that this amounted to ‘taking, and intending to continue to take, an active role in the child’s upbringing.’ The judge arguably failed properly to address this issue.”

### **Submissions**

10. Mrs Pettersen defended the determination and stated that the judge had correctly focused on the key issue of whether the appellant had a genuine desire to take an active role in the child’s upbringing. For cogent reasons given he was entitled to conclude that he did not. Seeing a child once a quarter could not meet the requirements of the Immigration Rules, particularly when there was an issue about his ability to communicate.

### **Consideration as to Whether the Immigration Judge Erred in Law**

11. The relevant Rule which sets out the relationship requirements for family life as a parent of a child in the UK is E.ECPT.2.4:

(a) The applicant must provide evidence that they have either-

(i) sole parental responsibility for the child; or

(ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK; and

(b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child’s upbringing.

12. I am satisfied that the judge did not address his mind to the requirements of this Rule, which he did not set out, and whilst it could be argued that the evidential base upon which he could have allowed the appeal was lacking, nevertheless, at the date of the hearing, the appellant was in possession of a court order granting him access to his son. It is not clear from the determination that the judge had in his mind that this order in itself might potentially be sufficient to meet the requirements of the Rule.

13. Accordingly he erred in law and the decision is set aside.

### **Resumed Hearing**

14. It was possible to remake the decision since the appellant was present. He gave his evidence in English and provided a certificate from Trinity College, London awarding him a Grade 2 CEFR Level A1 with distinction in spoken English. Whilst his English

was not fluent he was clearly able to answer the questions put to him and demonstrated that he could conduct a conversation in English.

15. The appellant said that his former wife has been preventing him exercising his right to contact with his son, whom he last saw on 29<sup>th</sup> May 2017. He went back to the Family Court in Leeds which, on 12<sup>th</sup> June 2018, reinstated his contact to fortnightly supervised contact every alternate Saturday between 12.00 and 1.00 pm. The mother was instructed to deliver and collect the child. The Court ordered that the matter come back for a review hearing on 20<sup>th</sup> September 2018.
16. Mrs Pettersen submitted that the present situation was the same as it had been before the original Immigration Judge and the simple fact was that he did not have any contact with his son and therefore could not meet the requirements of the Immigration Rules.
17. Mr Hasan submitted that the appellant was in possession of a court order and he had done all which he could do in order to pursue his right to contact. The appellant met the requirements of Section 117B(6) of the 2002 Act since he had a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK.

### **Conclusions**

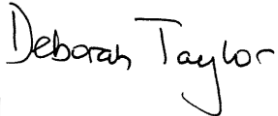
18. The appellant is in possession of several court orders from the Family Court in Leeds ordering that he be granted supervised access. He has been unable to enforce that order, because of his former wife's refusal to co-operate. That fact however does not prevent him meeting the requirements of E-ECPT.2.4(a)(ii) because he has been granted direct access to his child as ordered by a court in the UK.
19. I am satisfied that the appellant has provided evidence that he is taking and intends to continue to take an active role in the child's upbringing in that he is pursuing, quite properly through the courts, his right to access. I am also satisfied that he has clearly taken steps to address the criticisms made of him that he cannot properly communicate with his son because his English was so poor.
20. Section 117B Article 8: public interest considerations applicable in all cases states:
  - (1) The maintenance of effective immigration controls is in the public interest.
  - (2) It is in the public interest, and in particular in the interests of the economic well-being of the UK, that persons who seek to enter or remain in the UK are able to speak English, because people who can speak English -
    - (a) are less of a burden on taxpayers, and
    - (b) are better able to integrate into society.
  - (3) It is in the public interest, and in particular in the interests of the economic well-being of the UK, that persons who seek to enter or remain in the UK are financially independent, because such persons -

- (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to -
- (a) a private life, or
  - (b) a relationship formed with a qualifying partner,  
that is established by a person at a time when the person is in the UK unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where -
- (a) the person has a genuine and subsisting parental relationship with a qualifying child,
- and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.
21. The maintenance of effective immigration controls is in the public interest but it is not in the public interest to remove persons who are able to comply with the requirements of the Immigration Rules.
22. The appellant has demonstrated that he can speak English and, according to his witness statement, which is unchallenged, he is financially independent and employed in the UK on a permanent basis.
23. He does not have a poor immigration history. He made all of his applications within time and voluntarily departed from the UK following the refusal of his initial spouse visa in order to apply for entry clearance on the same basis.
24. So far as Section 117B(6) is concerned, it would clearly not be reasonable to expect the child to leave the UK since he has at all times since his birth lived with his mother, a British citizen. Whilst the appellant has not lived with his son since he was a baby, the best interests of the child clearly lie in his ability to have a relationship with his father which would be entirely severed if he was removed to Bangladesh.
25. It is difficult to say that he has a subsisting relationship with his child because his efforts to have regular access with him have been thwarted. Nevertheless, taking all of the above into consideration I am satisfied, on balance, that the appeal ought to be allowed on human rights grounds.

**Decision**

The original judge erred in law. His decision is set aside. It is remade as follows. The appellant's appeal is allowed.

No anonymity direction is made.

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail on the 'y'.

Signed

Date 31 August 2018

Deputy Upper Tribunal Judge Taylor